

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SANTINA CONTI

Claimant

VS:

IBT, INC./SUNRISE SYSTEMS, INC.

Respondent

AND

HARTFORD ACCIDENT & INDEMNITY, CO.

Insurance Carrier

Docket No. 162,310

ORDER

ON the 5th day of April, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge Alvin E. Witwer on February 28, 1994, came on for oral argument by telephone conference.

APPEARANCES

The claimant appeared by and through her attorney, Mark E. Kolich of Kansas City, Kansas. The respondent and insurance carrier appeared by and through their attorney, Steven C. Alberg of Overland Park, Kansas. There were no other appearances.

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter including the February 28, 1994 letter order of Administrative Law Judge Alvin E. Witwer regarding the respondent's motion to terminate temporary total disability compensation and the claimant's motion to quash the preliminary hearing scheduled in this matter.

ISSUES

Did the Administrative Law Judge exceed his jurisdiction in scheduling an administrative hearing regarding the respondent's motion to terminate temporary total disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds the scheduling of further proceedings in this matter by the Administrative Law Judge was appropriate and will not be disturbed by the Appeals Board.

K.S.A. 44-534a makes applicable to both claimant and respondent the specific criteria and procedures required to proceed to preliminary hearing for purpose of medical treatment and payment of temporary total disability compensation.

K.S.A. 44-551 limits the right of a party to appeal from a preliminary order to situations where it is alleged that the Administrative Law Judge exceeded the Administrative Law Judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. K.S.A. 44-534a allows appeal from a preliminary hearing for specific jurisdictional issues regarding whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or timely claim made, or whether certain defenses apply.

The hearing in question was to be a rehearing or reconsideration, based upon new evidence on a previous preliminary hearing wherein the Administrative Law Judge ordered temporary total disability compensation. The Appeals Board finds that under the facts and circumstances herein, the Administrative Law Judge retains jurisdiction over the original preliminary order and the Appeals Board lacks jurisdiction to review same.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer of February 28, 1994, hearing remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of May, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Mark E. Kolich, PO Box 171855, Kansas City, Kansas 66117-1855
Steven C. Alberg, 10955 Lowell, Suite 1050, Overland Park, Kansas 66210

SANTINA CONTI

3

DOCKET NO. 162,310

Alvin E. Witwer, Administrative Law Judge
George Gomez, Director